

**§ 7873. Income derived by Indians from exercise of fishing rights**

**(a) In general**

**(1) Income and self-employment taxes**

No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

**(2) Employment taxes**

No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

**(b) Definitions**

For purposes of this section—

**(1) Fishing rights-related activity**

The term “fishing rights-related activity” means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

**(2) Recognized fishing rights**

The term “recognized fishing rights” means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

**(3) Qualified Indian entity**

**(A) In general**

The term “qualified Indian entity” means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

**(B) Qualified Indian tribe**

For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with re-

spect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

**(c) Special rules**

**(1) Distributions from qualified Indian entity**

For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

**(2) De minimis unrelated amounts may be excluded**

If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

(Added Pub. L. 100-647, title III, § 3041(a), Nov. 10, 1988, 102 Stat. 3640.)

**EFFECTIVE DATE**

Pub. L. 100-647, title III, § 3044, Nov. 10, 1988, 102 Stat. 3642, provided that:

“(a) **EFFECTIVE DATE.**—The amendments made by this subtitle [subtitle E (§§ 3041-3044) of title III of Pub. L. 100-647, enacting this section and amending sections 1402 and 3121 of this title, section 71 of Title 25, Indians, and sections 409 and 411 of Title 42, The Public Health and Welfare] shall apply to all periods beginning before, on, or after the date of the enactment of this Act [Nov. 10, 1988].

“(b) **NO INFERENCE CREATED.**—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order.”

**§ 7874. Rules relating to expatriated entities and their foreign parents**

**(a) Tax on inversion gain of expatriated entities**

**(1) In general**

The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

**(2) Expatriated entity**

For purposes of this subsection—

**(A) In general**

The term “expatriated entity” means—

(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

**(B) Surrogate foreign corporation**

A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

**(3) Coordination with subsection (b)**

A corporation which is treated as a domestic corporation under subsection (b) shall not be treated as a surrogate foreign corporation for purposes of paragraph (2)(A).

**(b) Inverted corporations treated as domestic corporations**

Notwithstanding section 7701(a)(4), a foreign corporation shall be treated for purposes of this title as a domestic corporation if such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting “80 percent” for “60 percent”.

**(c) Definitions and special rules****(1) Expanded affiliated group**

The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

**(2) Certain stock disregarded**

There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

**(3) Plan deemed in certain cases**

If a foreign corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

**(4) Certain transfers disregarded**

The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

**(5) Special rule for related partnerships**

For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

**(6) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(B) to treat stock as not stock.

**(d) Other definitions**

For purposes of this section—

**(1) Applicable period**

The term “applicable period” means the period—

(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

**(2) Inversion gain**

The term “inversion gain” means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

**(3) Foreign related person**

The term “foreign related person” means, with respect to any expatriated entity, a foreign person which—

(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

(B) is under the same common control (within the meaning of section 482) as such entity.

**(e) Special rules**

**(1) Credits not allowed against tax on inversion gain**

Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

(A) the amount of the inversion gain for the taxable year, and

(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

**(2) Special rules for partnerships**

In the case of an expatriated entity which is a partnership—

(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

**(3) Coordination with section 172 and minimum tax**

Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

**(4) Statute of limitations**

**(A) In general**

The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(B) Pre-inversion year**

For purposes of subparagraph (A), the term "pre-inversion year" means any taxable year if—

(i) any portion of the applicable period is included in such taxable year, and

(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

**(f) Special rule for treaties**

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

**(g) Regulations**

The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.

(Added Pub. L. 108-357, title VIII, § 801(a), Oct. 22, 2004, 118 Stat. 1562; amended Pub. L. 109-135, title IV, § 403(u), Dec. 21, 2005, 119 Stat. 2628.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any entity which is treated as a domestic corporation under subsection (b)."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 108-357, title VIII, § 801(c), Oct. 22, 2004, 118 Stat. 1566, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years ending after March 4, 2003."

**Subtitle G—The Joint Committee on Taxation**

| Chapter |  | Sec. <sup>1</sup> |
|---------|--|-------------------|
| 91.     | Organization and membership of the Joint Committee ..... | 8001              |
| 92.     | Powers and duties of the Joint Committee .....           | 8021              |

AMENDMENTS

1976—Pub. L. 94-455, title XIX, § 1907(b)(1), Oct. 4, 1976, 90 Stat. 1836, struck out "Internal Revenue" in heading of subtitle G.

**CHAPTER 91—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE**

| Sec.  |                |
|-------|----------------|
| 8001. | Authorization. |
| 8002. | Membership.    |

<sup>1</sup> Section numbers editorially supplied.